86-600

No. 86-

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

ENVIRONMENTAL CONTROL BOARD OF THE CITY OF NEW YORK and THE CITY OF NEW YORK,

Petitioners,

-against-

LEE STERLING and THOMAS LA PIANA,

Respondents,

and

HOUSING COUNCIL OF NEW YORK, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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October 6, 1986

QUESTIONS PRESENTED

1. Whether the "nail and mail" provision for the service of sanitation summonses is constitutional as applied to absentee landlords of multiple dwellings who are required by law to employ a janitor on or near the premises and conspicuously to display at the multiple dwelling his name, address, including apartment number, and telephone number, when the service is accomplished by taping the summons in a conspicuous public area of the building and a copy of the summons is mailed within 30 days to the landlord or his agent at the address of the multiple dwelling?

2. Whether Wuchter v. Pizzutti, 276 US 13 (1928), was impermissibly extended by the Circuit Court when it refused to consider the extrastatutory procedure of second mailings to the actual address of the landlord in determining the constitutionality

of a statute as applied to a specific group where the statute is otherwise constitutional?

LIST OF PARTIES

The parties in the proceeding below were:

Plaintiffs (Respondents here)

Lee Sterling
Thomas LaPiana

Plaintiff-Intervenor (Respondent here)

Housing Council of New York, Inc.

Defendants (Petitioners here)

Environmental Control Board of the City of New York and the City of New York

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

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The petitioners, the Environmental Control Board of the City of New York and the City of New York, respectfully pray that a Writ of Certiorari issue to review the judgment and memorandum decision of the United States Court of Appeals for the Second Circuit entered in the above-entitled proceeding on June 5, 1986.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit denying the Petition for Rehearing is reprinted in the Appendix at page 1. The unanimous decision of the United States Court of Appeals for the Second Circuit which declared the petitioners' "nail and mail" statute unconstitutional is reprinted in the Appendix at page 4. The order and judgment of the United States District Court for the Eastern District of New York dated February 27, 1985, is reprinted in the Appendix at page 30. The opinion of the United States District Court for the Eastern District of New York, dated July 29, 1982, and incorporated into the order and judgment of February 27, 1985, is reprinted in the Appendix at page 48.

JURISDICTION

Respondents brought this action in the

United States District Court for the Eastern District of New York. On February 27, 1985, the District Court (Weinstein, C.J.), by order and judgment, "adher[ing] to, adopt[ing] in full, and incorporat[ing]" his decision and order of July 29, 1982, as well as Magistrate Caden's October 3, 1983, October 19, 1984, and November 1, 1984 Reports and Recommendations, entered judgment for petitioners and "closed" the case. On respondents' appeal, the United States Court of Appeals for the Second Circuit, by order issued June 5, 1986, unanimously reversed the judgment of the District Court and declared the "nail and mail" statute unconstitutional as applied to absentee landlords. On July 7, 1986, the United States Court of Appeals for the Second Circuit denied the Petition for Rehearing. The jurisdiction of this Court is invoked pursuant to the provision of 28

U.S.C. § 1254(1). This petition has been filed within the time allowed by law.

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S. Constitution, Amendment V:

> "No person shall be ... deprived of life, liberty, or property, without due process of law;..."

U.S. Constitution, Amendment XIV:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law;..."

The Administrative Code of the City of New York

> §1404(d)(2)
>
> The environmental control board shall not enter any final decision or order pursuant to the provisions of paragraph one of this subdivision unless the notice of violation shall have been served in the same manner as is prescribed for service of process by article three of the civil practice law and rules or article three of the business corporation law, except that service of a notice of violation of any provision of the charter or administrative code, the enforcement of which is the

responsibility of the commissioner of sanitation and over which the environmental control board has jurisdiction, may be made by affixing such notice in a conspicuous place to the premises, the occupancy of which caused such violation, provided that such notice may only be affixed where a reasonable attempt has been made to deliver such notice to a person in such premises upon whom service may be made as provided for by article three of the civil practice law and rules or article three of the business corporation law. When a copy of such notice has been affixed, pursuant to this paragraph, a copy shall be mailed to the person at the address of such premises; proof of such service shall be filed with the Environmental Control Board within twenty days; service shall be completed within ten days after such filing."

The Administrative Code of the City of New York

§D26-22.03

Obligations of owner.-a. The owner of a multiple dwelling shall provide adequate janitorial services.

b. In a multiple dwelling of nine or more dwelling units, the owner shall either:

(1) perform the janitorial services himself, if he is a resident owner; or

(2) provide a janitor; or

(3) provide for janitorial services to be performed on a 24-hour-a-day basis in a manner approved by the department.

c. The owner of a multiple dwelling or his managing agent in control shall post and maintain in such dwelling a legible sign, conspicuously displayed, containing the janitor's name, address (including apartment number) and telephone number. A new identification sign shall be posted and maintained within five days following a change of janitor.

§D26-22.05

Residence of person performing janitorial services; limitation on number of dwelling units served.-The person who performs janitorial services for a multiple dwelling of nine or more dwelling units (other than where janitorial services are performed on a 24-hour-a-day basis under section D26-22.03(b)(3)) shall reside in or within a distance of one block or 200 feet from the dwelling, whichever is greater, unless the owner resides in the multiple dwelling. Where two or three multiple dwellings are connected or adjoining, it shall be sufficient,

however, that the person who performs janitorial services resides in one of these, but no person who performs janitorial services for more than one multiple-dwelling may service more than 65 dwelling units. Regardless of residence the janitor must have a telephone where the janitor may reasonably be expected to be reached.

STATEMENT OF THE CASE

This action was commenced in July, 1980, by respondents Sterling and La Piana, owners or managing agents of multiple dwellings in New York City who had received sanitation code violations. Essentially, the complaint challenged the constitutionality of the regulatory and procedural framework for the enforcement of New York City's laws relating to the cleanliness of the City streets, inter alia, that the provision of section 1404(d)(2) of the Administrative Code of the City of New York, as amended by Chapter 623 of the Laws of 1979, for "nail and mail" service of sanitation violations, on its face and as applied, did not provide reasonable notice to an individual that an alleged violation was being charged against him. They sought relief, inter alia, declaring this practice unconstitutional and enjoining its continuation, dismissing any judgments

for sanitation violations entered against the individual respondents and awarding damages for the violations of their civil rights.

In an affidavit dated September 25, 1980, and attached to their answer, petitioners set forth the procedures employed in effecting "nail and mail" service where personal service is rendered impossible. The affiant, the Supervisor of the Summons Control Unit, stated that, as a regular practice of the agency, a second mailing, not required by statute, was sent to the actual address of the owner or agent if that address is different from that of the violation's occurrence. The affidavit states:

> "When a summons is not served personally, it is the responsibility of the Summons Control Unit to complete service by mailing a copy of the executed summons to the alleged violator. When the premises where the alleged violation occurred is a dwelling, the address of the premises is put through a computer whose data includes the owner registration files of the Department of Housing,

> Preservation and Development and the tax files of the Department of Finance. If this search identifies an owner or managing agent at a different address than that of the place of occurrence, that name and address is entered upon the summons and an additional copy of this summons is mailed to that address. The date of mailing is stamped on the back of the summons."

The fact that this procedure, including the second mailing to the actual address of the owner or agent if different from the place of occurrence, was in place from the inception of the "nail and mail" provisions in 1979 was never controverted. Rather, respondents alleged merely that they never received second mailings.

The District Court upheld the facial constitutionality of the statute, basing its decision upon Greene v. Lindsey, 456 US 444 (1982), and Mullane v. Central Hanover Bank and Trust Co., 339 US 306 (1950). The Court stated that "[t]he state may rely on a property owner to superintend his

property and may premise a scheme of service of process on the assumption that a notice affixed to the premises will bring the proceeding to the attention of the responsible individual." Appendix, page 52. The mailed notice "provides additional reliability that notice will be received by the affected parties and assures the soundness of the statutory notice." Appendix, page 53. After determining that the other issues raised by respondents in their amended complaint were without merit, the Court remanded the case to Magistrate Caden for the purpose of ascertaining the reliability of enforcement practices with respect to the statute's application to absentee landlords.

The Magistrate summarized the issues to be determined as:

> "whether §1404(d)(2) is constitutional as applied to [respondents]. In other words, are [petitioners'] policies and procedures for applying the

> provisions of §1404(d)(2) in cases of sanitation violations allegedly observed at [multiple dwellings] 'reasonably calculated[,] under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 316 (1950)."

Further, given the fact that appellants had invoked federal jurisdiction under 42 U.S.C. §1983, he found, relying upon Monell v. New York City Department of Social Services, 436 US 658 (1978), that the constitutionality of section 1404(d)(2) as applied was to be considered in terms of "the actual policy, practice or custom of the [petitioners] and not merely the failings of individual SEAs [Sanitation Enforcement Agents]" in particular instances of their service of Notices of Violation on respondents or respondents' witnesses. Nor would the Magistrate, relying upon, inter alia, Brody v. Moan, 551 F Supp 442 (S.D.N.Y.,

1982), consider whether petitioners' policies complied with the precise requirements of section 1404(d)(2), finding that "the possibility of non-compliance raises state, but not constitutional issues." In a Report and Recommendation issued October 3, 1983, the Magistrate found the application of section 1404(d)(2) to be constitutional.

Further hearings were held before the Magistrate at the direction of the District Court to determine, inter alia, whether petitioners had taken steps to amend the "nail and mail" statute by codifying existing practices of the Department with respect to additional mailings. The Magistrate reported that petitioners' enforcement procedures fully comported with constitutional requirements and that the statute was amended on August 6, 1984.

The District Court, by order and judgment dated February 27, 1985,

"adhere[d] to, adopt[ed] in full, and incorporate[d]" its decision and order of July 29, 1982, as well as Magistrate Caden's Reports and Recommendations, entered judgment for petitioners and "closed" the case. Appendix, pages 45-47.

On appeal, the Second Circuit held the "nail and mail" statute unconstitutional as applied to absentee landlords. The Court stated that the "nailed" notice, which is taped high on a wall in the interior vestibule of the building, was unlikely to come to the landlords attention since it was likely to disappear by natural or human forces. Appendix, page 18. It stated that the "mailed" notices required by statute frequently did not reach the landlords and were, therefore, not reasonably calculated to provide notice. Appendix, page 21. The fact that the landlords should have taken reasonable measures to receive mail at or

inspect their buildings was found to be irrelevant to petitioners' reasonable calculation. Appendix, page 22. The Court, in footnote 4, misapprehended the record by stating that second mailings were begun in 1981 and gradually implemented over a three year period. Appendix, pages 28-29. In fact, as indicated above at page 8, the second mailing was always made from the time of the 1979 amendment. In any case, by impermissibly extending Wuchter v. Pizzutti, 276 US 13 (1928), to statutes as applied, the Court refused to consider any extra statutory mailings. Appendix, page 29.

On the Petition for Reargument, the Circuit Court considered but found the presence of a janitor did not significantly increase the possibility of an absentee landlord receiving notice. Appendix, pages 2-3.

REASONS FOR GRANTING THE WRIT

The Court of Appeals, in declaring the "nail and mail" portion of the service of process statute unconstitutional, has decided a substantial federal question in conflict with applicable recent decisions of this Court. See Mennonite Board of Missions v. Adams, 462 US 791 (1983); Greene v. Lindsey, 456 US 444 (1982). In addition, a conflict exists with the New York State decision, Matter of DeFay v. City of New York Environmental Board, 114 AD2d 1 (1st Dept., 1986), 497 NYS2d 666, app. dism., 68 NY2d 664 (1986), upholding the subject statute as constitutional as applied to an absentee landlord and denying reargument of its decision made in light of the subsequent Circuit Court decision in Sterling. __AD2d__, (dec. September 25, 1986). Although the statute has been amended, there exists a potential exposure of millions

of dollars in outstanding judgments affected by the decision. Moreover, this precedent severely limits the ability of government to enforce basic public health laws and encourages absentee landlords affirmatively to seek to avoid receiving process, even to the extent of non-compliance with laws requiring agents to be identified and to be resident in or near landlords' buildings. This precedent is potentially detrimental to municipalities throughout this jurisdiction.

Moreover, the decision of the Court of Appeals will frustrate and likely discourage good faith efforts by public or private entities, who are effecting service of process, to take extra measures to ensure receipt of process in cases where it becomes apparent that service limited to steps required by statute may not result in actual receipt of notice.

Finally, the decision of the Court of Appeals calls into question the constitutionality of one of the most-used forms of service of process of minor violations - that of parking violations, which are commonly affixed to the windshield of automobiles.

1. The Decision of the Court of Appeals conflicts with prior applicable decisions of this Court and needlessly eliminates a valid and efficient procedure to effect service of process.

This Court has repeatedly reaffirmed the propriety of the presumption that the owner of property will sufficiently attend to his property so as reasonably to be expected actually to receive notice posted there. It stated in Mullane v. Central Hanover Bank and Trust Co., 339 US 306, 316 (1950):

> . . . The ways of an owner with tangible property are such that he usually arranges means to learn of

> any direct attack upon his possessors or proprietary rights . . . . A state may indulge the assumption that one who has left tangible property in the state . . . has left some caretaker under a duty to let him know that it is being jeopardized.

Expanding upon this idea the Court stated in Greene v. Lindsey, 456 US 444 (1982), at 451, n.6:

> . . . Of course, the Mullane discussion of the special notice rules with respect to proceedings affecting property ownership focused on the forms of notice that might be appropriate as a supplement to the direct disturbance of the property itself. But where the State has reason to believe the premises to be occupied or under the charge of a caretaker, notice posted on the premises, if sufficiently apparent, is itself a form of disturbance, likely to come to the attention of the occupants or the caretaker.

The Greene Court additionally stated (supra at 451-452):

> The frequent restatement of this rule impresses upon the property owner the fact that a failure to

> maintain watch over his property may have significant legal consequences for him, providing a spur to his attentiveness, and a consequent reinforcement to the empirical foundation of the principle. Upon this understanding, a State may in turn conclude that in most cases, the secure posting of a notice on the property of a person is likely to offer that property owner sufficient warning of the pendency or proceedings possibly affecting his interests.

In sum, this Court has fully endorsed "the presumption that notice posted upon property is adequate to alert the owner or occupant of property of the pendency of legal proceedings." Greene, supra at 452. Of course, any additional notice, whether by publication or mailing, can only further reinforce or buttress the efficacy of the posted notice. See, e.g., Id. at 455 n.9. Cf. Mullane, supra, 339 US at 316.

The "nail and mail" service provided for by the 1979 statute meets the constitutional standard of notice reasonably calculated

under the circumstances to reach the interested parties. It is entirely reasonable to presume that a notice of violation affixed to premises will come to the attention of the person who manages or controls the building. The Greene Court specifically noted that (456 US at 452-453) "posting notice on the door of a person's home would, in many or perhaps most instances, constitute not only a constitutionally acceptable means of service, but indeed a singularly appropriate and effective way of ensuring that a person who cannot conveniently be served personally is actually apprised of proceedings against him." This statement clearly applies to and validates the subject "nailed" service of Sanitation NOV's upon the owners of private homes, commercial establishments and owner-occupied multiple dwellings. It applies equally to multiple dwellings with an on-site or resident

superintendent, in that the superintendent is present at the premises to receive the posted notice on behalf of the absentee owner. Cf. Mullane, supra, 339 US at 316.

The Court of Appeals, in finding that the posted notices were not likely to come to the owner's attention, overlooked our argument that a significant number of multiple dwellings have a resident janitor or superintendent on the premises who, unlike a tenant, may be reasonably expected to look after their employer's interests by forwarding the notice of violation to him. Since superintendents would be actively engaged in their duties at the premises during the same business hours when the SEA would post the notice, and, in most instances, are actual residents of the building, the likelihood of the janitor or superintendent seeing a notice affixed to the

front door before it is removed by "forces human or natural" is very great.

The obligation to have a janitor present at the premises is imposed by law and is a fact upon which the Legislature may base its determination whether notice in a particular form is reasonably calculated to reach the intended recipient.

In regard to janitorial services, Administrative Code of the City of New York, §D26-22.03 (1977 Williams Press Ed., Vol. 4, p. 474 and 1985-86 Supplement at p. 166) provides the following:

> §D26-22.03 Obligations of owner.-a. The owner of a multiple dwelling shall provide adequate janitorial services.
>
> b. In a multiple dwelling of nine or more dwelling units, the owner shall either:
>
> (1) perform the janitorial services himself, if he is a resident owner; or
>
> (2) provide a janitor; or

(3) provide for janitorial services to be performed on a 24-hour-a-day basis in a manner approved by the department.

c. The owner of a multiple dwelling or his managing agent in control shall post and maintain in such dwelling a legible sign, conspicuously displayed, containing the janitor's name, address (including apartment number) and telephone number. A new identification sign shall be posted and maintained within five days following a change of janitor.

In addition, Administrative Code §D26-22.05 (Id., 1985-86 Supplement at p. 167) provides:

§D26-22.05. Residence of person performing janitorial services; limitation on number of dwelling units served. The person who performs janitorial services for a multiple dwelling of nine or more dwelling units (other than where janitorial services are performed on a 24-hour-a-day basis under section D26-22.03(b)(3) shall reside in or within a distance of one block or 200 feet from the dwelling, whichever is greater, unless the owner resides in the multiple dwelling. Where two or three multiple dwellings are connected or adjoining, it shall be

> sufficient, however, that the person who performs janitorial services resides in one of these, but no person who performs janitorial services for more than one multiple-dwelling may service more than 65 dwelling units. Regardless of residence the janitor must have a telephone where the janitor may reasonably be expected to be reached.

Thus, an owner of a multiple dwelling with nine or more units is obliged by statute (which existed in its present form during the period relevant to this litigation) to provide a janitor who must reside on or very near the premises under his care, or the owner must make arrangements satisfactory to the department for other, 24-hour-a-day janitorial service.

At least in the case where the premises consists of nine or more units, we think it reasonable to assume that the owner will comply with the New York City Administrative Code and there will be a janitor continuously on or very near the

premises. In addition, the posting of the name and address of the janitor would greatly increase the likelihood of the first mailing reaching the owner's attention since the name would be recorded on the notice of violation by the SEA.

This Court has indulged a presumption that an owner of property will provide a caretaker to guard his interests in that property. Here, no presumption need be indulged that a caretaker will be at the property since the obligation is imposed by law. The caretaker, as an employee of the owner, may be presumed to act in his employer's interests, at least insofar as providing the owner with the posted notice of violation.

It is at least likely that the janitor will forward the notice of violation to his employer, since, if a default judgment

ensues, the janitor will be held accountable by the owner both for the unsanitary condition that led to the violation notice, and for the owner's lack of notice. Cf. Bender v. City of Rochester, 765 F2d 7 (2d Cir., 1985) (assuming administrator of estate will take steps to preserve estate property against government action, or at least inform the heirs of the notice so they can protect themselves). When the presence of a superintendent or janitor on the premises is taken into account, the likelihood of owners receiving the affixed notice of violation appears to be at least as great as that of a motorist receiving notice of a parking violation left on his vehicle - a form of notice widely used and accepted.

We think it unfair to allow absentee landlords in a densely populated urban environment to avoid accountability for sanitation code violations by allowing them to

set up as an argument that they customarily defy the Administrative Code provisions by not providing a janitor at the premises or posting required signs giving notice of the location of a management office or superintendent's residence. (See Findings of Magistrate Caden, A158-159). These same owners who fail to provide janitorial services at their tenements are obviously owners whose premises will generate numerous notices of violation and who were the most difficult to serve under the former statute. There is no finding in this Record that defiance of the requirement for janitorial services was so widespread and notorious as to undermine the legislative judgment that such a caretaker will be expected to be at every premise of nine or more units. The defiance of law of some owners should not serve to undermine the legitimacy of the legislative assumption that posting at

premises where janitorial services are required by law is reasonably calculated to give notice to the owner.

While the instance of a multiple dwelling which is neither owner-occupied nor employs a resident superintendent may, arguably, present a closer case, the state may reasonably impose upon the owner of such property the burden of inspecting his property for any legal notices prominently affixed thereto. See Greene, supra at 452. The 1979 statute sought further to insure the probability of receipt of an actual notice of any Sanitation NOVs by its additional provision for mail to the owner or managing agent of the premises. The absentee owner of a multiple dwelling could obviate any impediment to his receipt of the "mailed" NOV by simply designating or maintaining a mailbox at the premises for receipt of his mail, a burden entirely consonant with an

owner's well-recognized duty to superintend his property. See Greene, supra, at 452; Mullane, supra, at 316.

2. The Court of Appeals decision erroneously extended the rule of Wuchter v. Pizzutti to cases challenging notice statutes as applied.

Another important consideration in favor of granting the writ is that the Court of Appeals, without discussion of the issue, extended the rule of Wuchter v. Pizzutti, 276 U.S. 13, 24 (1928), to cases challenging the validity of a statute as applied to a particular group. Wuchter held that extrastatutory procedures undertaken to effectuate service of process cannot render valid a procedural notice statute invalid on its face. However, an extension of that rule to cases such as this, challenging a notice statute as applied, finds little support in logic or sound policy. It is precisely in situations where an otherwise facially valid

notice statute is of doubtful validity that the party attempting service of process should be expected to utilize other, extrastatutory procedures to ensure actual receipt of notice. This is exactly what the City did in the period right after the enactment of the 1979 version of the statute. It was determined that in all cases where the SEAs utilize the nail and mail procedure of service on a dwelling, there would be a second mailing of the notice of violation to an address of an owner or managing agent if obtainable from City records. This second mailing greatly enhances the likelihood that the notice of violation will be received. It appears to be accepted by the Court of Appeals that section 1402(d), with the second mailing provision included, would be constitutional as applied to absentee landlords.

This Court has recognized a distinction in reviewing challenges to service of process between cases where personal notice has been given to defendants and those cases where it has not. National Equipment Rental v. Szukhent, 376 US 311, 325 (1964). Here, petitioners claimed that in addition to the statutory "nail and mail" service, a second mailing was made to all persons similarly-situated to plaintiffs. Notably, the courts below did not conclude that actual notice was not received. Allowing the statute to be challenged by individual plaintiffs, who are members of a group who regularly received actual notice of violation via the second mailing, would appear to violate the principle of self-restraint in constitutional adjudication announced by this Court in United States v. Raines, 362 US 17, 21-22 (1960). The proposition that the decision in Raines has overruled Wuchter has

been adopted by at least one Court of Appeals in Wiren v. Eide, 542 F.2d 757, 762-763 (9th Cir. 1976).

Moreover, for sound policy reasons, Wuchter should not be extended to "as applied" challenges. To do so would discourage all attempts to undertake extra measures to ensure not merely satisfaction of the minimum requirements of due process, but as much as possible, effectuation of actual notice. No party is likely to undertake additional extrastatutory measures to effect service if those measures will be totally ignored by the Courts when a defendant challenges the statute as applied to him. A Legislature cannot be expected to anticipate every factual situation which may arise in implementation of a valid statute. The City, early-on in the utilization of the "nail and mail" statute, determined that many owners of multiple dwellings did not have

owner or agent mailboxes on their business premises, nor did they provide signs listing the mailing addresses of the owner or agent. Some of these premises apparently did not conform to the law requiring a resident janitor, or the equivalent, at the premises. The City, in response, in determining to send a second mailing of the notice of violation to the owner's or agent's business premises, in practical effect, interpreted the statutory "premises" more broadly to include the address of an owner or agent if different from the premises where the violation occurred. This broad construction of the statute to remove any doubt of its constitutionality as applied, undertaken by a municipal government, should be given full effect by the Courts. It should not be ignored because of a strained and unwarranted extension of the decision in Wuchter.

The holding in Wuchter has been explained by this Court as bottomed on the failure of the state statute there involved to provide explicitly for communication of notice to the defendant. National Equipment Rental v. Szukhent, 375 US 311, 315 (1964). Obviously, the statute, to withstand challenge, must require every element necessary to comply with at least minimum standards of due process. Here, the New York statute does require every essential element either by personal service of the summons or, if that is not possible, through "nail and mail" service. Specifically, in the latter case, the statute requires that process be left at the premises of the violation and be mailed to that premises as well. If there is a question whether process will be communicated in the factual situation where there is no owner, agent or janitor to be found, that is not because of a deficiency in

the statute, but is a circumstance with which a process server must deal (for example, a second mailing to the actual business address of the owner) within the imperative of the statute to communicate notice. The reasoning of Wuchter is not implicated.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 6, 1986